

UNPUBLISHED

UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

RODERICK W. MILLER,
Petitioner-Appellant.

v.

No. 98-7855

EARL BESHEARS, Warden; ATTORNEY
GENERAL FOR THE STATE OF
MARYLAND,
Respondents-Appellees.

On Remand from the United States Supreme Court.
(S. Ct. No. 99-6233)

Submitted: May 13, 1999

Decided: May 19, 1999

Decided on Remand: May 31, 2000

Before WIDENER and MOTZ, Circuit Judges,
and BUTZNER, Senior Circuit Judge.

Dismissed in part, vacated in part, and remanded with instructions by
unpublished per curiam opinion.

COUNSEL

Roderick W. Miller, Appellant Pro Se. John Joseph Curran, Jr., Attor-
ney General, Regina Hollins Lewis, Assistant Attorney General, Bal-
timore, Maryland, for Appellees.

Unpublished opinions are not binding precedent in this circuit. See Local Rule 36(c).

OPINION

PER CURIAM:

This case appears before this court for the second time pursuant to the order of the Supreme Court vacating our prior judgment and remanding for further consideration in light of the Court's decision in Roe v. Flores-Ortega, 528 U.S. ___, 120 S. Ct. 1029 (2000). See Miller v. Kaloroumakis, 120 S. Ct. 1239 (2000). Because the analysis prescribed by Roe is highly fact-specific, we conclude that it should be performed by the district court in the first instance. Accordingly, we grant a certificate of appealability as to Miller's claims of ineffective assistance relating to counsel's failure to consult with his client and inquire as to the need for an appeal, and his related claim that this ineffective assistance provided cause for Miller's failure to timely raise his numerous claims of trial court error on appeal, vacate the portions of the district court's order relating to these issues, and remand for further consideration in light of Roe. Because our prior dismissal of Miller's remaining ineffective assistance claims falls outside the scope of the Supreme Court's remand, we again deny a certificate of appealability as to those claims and dismiss Miller's appeal of those claims. See Lowery v. Circuit City Stores, Inc., 206 F.3d 431, 437 (4th Cir. 2000). We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

DISMISSED IN PART, VACATED IN PART,
AND REMANDED WITH INSTRUCTIONS